

We the People

insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.



PROMOTING THE EFFECTIVE ADMINISTRATION OF JUSTICE



AJS

AMERICAN JUDICATURE SOCIETY

HAWAI'I CHAPTER

E-NEWS

JUNE 2011

REPORT OF THE SPECIAL COMMITTEE ON THE EFFECTS OF THE ECONOMY

COMMITTEE MEMBERS

Robert Alm, Chair	Matthew Matsunaga
William Atwater, Reporter	Thomas Mick
Lisa Bail	Paula Nakayama
Rai Saint Chu	Russell Okata
Hilary Gangnes	Marcus Oshiro
Colette Garibaldi	Benjamin Rafter
Thomas Keller	Lawrence Reifurth
Donna Mercado Kim	Kent Tsukamoto
Evelyn Lance	Shan Tsutsui
Rodney Maile	

The Special Committee on the Effects of the Economy on the Judiciary (“the Committee”) reviewed the issues raised by the American Judicature Society Resolution establishing the Committee.

The Committee noted that the budget of the Judiciary in the last two years has been reduced from \$150.4 million to \$130.7 million. This cut of \$19.7 million amounts to a 13% reduction. The reductions included the elimination of 79 positions and resulted in \$2.8 million in reductions of purchase-of-service (POS) contracts in FY 2010. This has also meant furloughs and with them the closure of the court system two days a month.

The Committee conducted a survey of judges which yielded the following finding. Judges feel that the budget cuts and furloughs have reduced productivity, slowed dispositions of cases and left facilities in less than optimum condition. While most judges do not feel that they are under undue criticism or public pressure, there is increasing congestion, a push to move cases and some public sense that the courts “don’t care” about people. The judges are virtually unanimous in their views that there is a clear impact on their effectiveness. The major issues are timely handling of cases and the impact on paperwork of having less work days for staff to manage what is a significantly increasing workload.

The Committee reached the following conclusions.

1. The budget cuts have had a significant negative impact on the functioning of the Judiciary.
2. The Judiciary performs a critical function in society, very much akin in standing to the so-called “safety net” programs and should be among the highest priorities for restoration by the Legislature.
3. The courts can probably, from a legal standpoint, insist on funding at some minimal level, consistent with the obligations imposed on them. Their choice to work within the overall budget and accede to, or stated otherwise to tolerate, substantial reductions is commendable.
4. Funding to the Judiciary should come in lump sum and the Legislature should not specify how the Judiciary specifically absorbs any reduction.
5. The State should seek an opinion on how budget reductions and especially their timing impacts or doesn't impact on the pension benefits of judges, and in particular whether any changes can be imposed retroactively within a particular year.
6. It is important for the American Judicature Society (“AJS”), the Hawaii State Bar Association and others to provide as much public support for the Judiciary and its budget as possible.
7. The American Judicature Society should very specifically commend Chief Justice Mark Recktenwald (and former Chief Justice Ronald Moon) and the entire Judiciary for the way in which they have handled and are handling the reductions. They have maintained public confidence in the courts, and handled very difficult circumstances with grace and dignity.

The AJS Hawai'i Chapter Board of Directors approved the Committee's report on March 17, 2011. A full text of the report may be viewed on the AJS website at www.ajs.org.

**REPORT OF THE JUDICIAL SELECTION, RETENTION AND ACCOUNT-
ABILITY STANDING COMMITTEE OF THE
AMERICAN JUDICATURE SOCIETY — HAWAI'I CHAPTER
THE ROLE OF THE HAWAI'I STATE BAR ASSOCIATION IN THE JUDICIAL
SELECTION AND RETENTION PROCESS
AND
PROPOSED CHANGES TO JUDICIAL SELECTION COMMISSION RULES**

COMMITTEE MEMBERS

Hawai'i Circuit Judge (retired) Victoria S. Marks, Chair

William Atwater, Co-Chair

Federal District Judge Leslie Kobayashi

Colin Miya

Federal District Judge Susan Oki Mollway

Frederick Rohlfig

Gerald Sekiya

The objectives of the Standing Committee on Judicial Selection, Retention and Accountability (the "Committee") were:

Reviewing, monitoring, and, if appropriate, making recommendations on matters relating to issues relating to merit selection generally, and particularly the process and procedures affecting the selection and retention of Hawaii judges, both state and federal. These matters include, but are not limited to, the Judicial Selection Commission, its Constitutional mandate, the Rules of the JSC and its work. The Committee will review alternatives to addressing the conclusions and recommendations of Chief Justice Moon in his annual report to the Chapter relating to the role of the HSBA as well as other organizations in the selection and retention process.

The work of the Committee spanned more than a year. During that period, the Committee met with a number of resource people including members of the Judicial Selection Commission, President of the Hawaii State Bar Association, Executive Director of the Hawaii State Bar Association, a member from the Board of the Hawaii State Bar Association, a former Judicial Selection Commission member, a State Senate President, a State Senator and the Director of Research & Programs from the American Judicature Society.

The Committee made the following recommendations.

1. The HSBA board should cease its current practice of rating nominees and provide the information it gathers from its members (without judgment) to the appointing or confirming authority (for judicial vacancies), or to the JSC (for judicial retentions). This is the same recommendation made in the previous AJS Committee report and by Chief Justice Moon in his 2008 and 2009 speeches to the Hawaii Chapter of AJS.

2. The HSBA board should cease its current practice of reevaluating candidates for judicial retention. That process duplicates work done by the Rule 19 Committee of the Hawaii Supreme Court. Moreover, there appears to be no rationale for HSBA involvement, because the JSC invites comment on judges seeking retention, and the JSC has stringent confidentiality practices. Moreover, any effort to discern “general themes” from a poll of HSBA members is likely to be tantamount to a rating, and under the board’s guidelines, those “themes” can be discerned by one individual based on a minority of the comments submitted to the HSBA. Further, the HSBA polling and tabulation process is unlikely to provide meaningful information to the JSC, and the process is not consistent with our system’s basic premise that judicial retention decisions should not be made by ballot.

The Committee encouraged the HSBA board to rethink its role in the judicial retention process. The HSBA’s most useful role would be to encourage members to provide oral testimony or detailed written comments on a confidential basis, either directly to the JSC or to the HSBA, so that the HSBA could collate such comments and turn them over to the confirming authority. For extraordinary situations, the board could offer to assist members in constructing or redacting comments so as to provide useful factual information to the JSC without revealing the identity of the attorney. In any case, if the HSBA board continues to participate in the JSC retention process, it should furnish the information it obtains to the JSC, with as little editing, redaction or summarization as possible.

3. The Committee — which includes four members who have personally participated in HSBA interviews — believes those interviews can elicit valuable input for the confirmation process. So long as the board terminates its current practice of rating potential judges, this Committee encourages the board to continue such interviews and encourages potential judges to participate. Factual information developed during those interviews can obviously assist the confirming authority. In addition board members may form impressions during the interview process that could assist the decision makers. Accordingly, we hope the HSBA board will permit its members to submit individual comments either directly to the confirming authority or to the HSBA, so that the HSBA may collate such comments and turn them over to a confirming authority, just as it does when individual HSBA members comment if they so choose.

This Committee also encourages individual board members to share their own views with the Senate Judiciary Committee, including views based on their participation in board interviews, so long as they make clear that they are presenting individual views and observations, and not the collective conclusions of 20 HSBA board members.

4. When the HSBA conducts interviews with nominees, it should provide nominees with copies of the same summaries and comments the HSBA board receives. These comments are summarized and redacted for the HSBA board and copies of the redacted comments are provided to board members as a basis for judicial qualification decisions. There is no apparent reason for the HSBA policy forbidding a judicial nominee from being provided with a copy of these materials.

5. In providing information to the approving or confirming authorities, the HSBA board should include data reasonably needed to provide context for the information. For example, when providing information about attorneys' comments, the board should specify:

- The number of bar members who submitted comments;
- The approximate number of those comments supporting or opposing a nominee; and
- Insofar as possible, the specific content of those comments.

The AJS Hawai'i Chapter Board of Directors approved the Committee's report on March 17, 2011. A full text of the report may be viewed on the AJS website at www.ajs.org.

REPORT OF THE SPECIAL COMMITTEE ON JUDICIAL CAREERS AND SELECTIVITY

COMMITTEE MEMBERS

Judge Virginia Lea Crandall, Co-Chair	Allen K. Hoe
Mark Rossi, Co-Chair	John Yamano
Federal District Judge Susan Oki Mollway	Erika Lewis
Chief Judge Craig Nakamura	Momi Cazimero
Judge Robert M. Browning	Janet A. Liang
Judge Rom A. Trader	Kathryn Matayoshi
Rosemary Fazio	Laurie Tochiki
Alfred M.K. Wong	

The Special Committee on Judicial Careers and Selectivity (the “Committee”) considered various factors potentially impacting the decision to seek judicial appointment and assessed possible measures that could be implemented to encourage interest in judicial opportunities.

The Committee identified six factors that could influence a potential candidate’s decision to move forward with the selection process: (1) the disparity in compensation, benefits, and retirement between judges, government employees, and private practitioners; (2) the perception that the selection process can be daunting; (3) the impact of a failed application upon future prospects; (4) the impact of the job on personal and family life; (5) the appointing authority’s desire to select from a particular field; and (6) the impact of difficult and controversial judicial decisions on one’s personal and professional life.

The AJS Hawai’I Chapter Board of Directors approved the Committee’s report on March 17, 2011. A full text of the report may be viewed on the AJS website at www.ajs.org.

AJS NATIONAL REPORT

In national board member Ivan Lui-Kwan's report to the Hawaii Chapter, he referenced an op ed article submitted to the New York Times by Bill Johnson, President of the American Judicature Society, and Judge Peter Webster, President Elect of the American Judicature Society. Although the article was not published, it is insightful. The article commented on the frequency and intensity of attacks on judicial independence, citing the defeat in a retention election of three members of Iowa's Supreme Court because of the court's unanimous 2009 decision that found Iowa's Defense of Marriage Act unconstitutional. Mr. Lui-Kwan's report also referenced AJS Action Alert — Threats to Merit Selection by AJS Executive Director Seth Andersen, and a letter by Mr. Johnson published in the Wall Street Journal on November 11, 2010.

Attached is a copy of the text of the report.

AJS EXECUTIVE DIRECTOR SETH ANDERSEN'S VISIT TO HAWAII

AJS Executive Director Seth Andersen will be in Hawaii from June 15—17 to meet with Hawaii Chapter members, judges and members of the Judicial Selection Committee.

E-NEWS EDITORS

Judge (retired) Colleen Hirai

Ivan M. Lui-Kwan

AJS National Report

By

Ivan Lui-Kwan

AJS Hawaii Chapter Meeting

March 17, 2011

- A. Agenda for National Board Midyear Meeting in Atlanta on February 11, 2011
- B. Op-ed submitted by Bill Johnson (AJS President) and Judge Peter Webster (AJS President-Elect) to New York Times
- C. AJS Action Alert dated March 8, 2011 from Seth Andersen, AJS Executive Director
- D. AJS February 2011 Research by LoveScott Mission Assist



AMERICAN JUDICATURE SOCIETY
Board of Directors Midyear Meeting
Business Agenda

February 11, 2011

Ritz-Carlton Downtown, Atlanta GA

Dial in Number: 877-594-8353, code 39735264#

Thursday, February 10, 2011

7:00 – 8:30 PM Informal Board Dinner..... *Azio Restaurant*

Friday, November 11, 2011

8:00 – 8:30 AM Breakfast Buffet..... *Ballroom Salon III, lower level*

8:30 AM – 12:00 PM Board Meeting – Morning Session..... *Ballroom Salon IV, lower level*

8:30 – 8:40 Approval of November 11 Fall Meeting Minutes

8:40 – 8:50 Report of the President, *William D. Johnston*
NAC appointments requiring ratification (Hon. Evelyn Davis, Hon. John Irwin)

8:50 – 9:00 Report of the National Advisory Council Chair, *Martin Belsky*
NAC Steering Committee Roster

9:00 – 9:10 Report of the Executive Director, *Seth S. Andersen*
Opperman Award News Release; Devitt Award Call for Nominations

9:10 – 9:20 Staff Reports (consent)
Center for Judicial Ethics, *Cindy Gray*
Publications, *David Richert*
Research and Programs, *Malia Reddick*
Hunter Center for Judicial Selection, *Rachel Paine Caufield*
Center for Forensic Science and Public Policy, *Danielle Mitchell*

9:20 – 10:00 Committee Reports

9:20 – 9:25 Audit, *Dennis Hayes*

9:25 – 9:45 Centennial Planning, *Gordon Doerfer & Ruth McIntyre*

9:45 – 9:50 Center for Forensic Science and Public Policy Advisory
Seth Andersen

9:50 – 10:00 Strategic Planning Implementation, *Peter D. Webster*

10:00 – 10:15 AM BREAK

10:15 – 11:00 AM Committee Reports (continued)

10:15 – 10:25 Task Force on Judicial Independence, *Martin Belsky*

10:25 – 10:30 Corporate & Law Firm Benefactor, *Tom Leighton & Ivan Lui-Kwan*

10:30 – 10:35 Editorial, *Peter D. Webster*

10:35 – 10:45 Membership, *Ruth McIntyre*

10:45 – 10:50 Nominating, *Carole Wagner Vallianos*

10:50 – 11:00 Program, *Dawn Clark Netsch*

Friday, November 11, 2011

- 11:00 AM – 12:00 PM** Report of the Treasurer, *Jon Comstock*
December 2010 preliminary financial statements
Summary of investment holdings
1/24/11 minutes
- 12:00 – 1:00 PM** Lunch *Ballroom Salon III, lower level*
- 1:00 – 4:30 PM** Board Meeting – Afternoon Session *Ballroom Salon IV, lower level*
- 1:00 – 1:30** Executive Session
- 1:30 – 2:00** ABA House of Delegates Agenda Items, *Richard B. Teitelman*
- 2:00 – 3:00** Report from Love Scott/Mission Assist, *Andrea James*
Question & Answer session
- 3:00 – 3:15** BREAK
- 3:15 – 3:30** Bert Brandenburg, Executive Director, Justice At Stake
- 3:30 – 4:15** Discussion of Centennial Planning and Strategic Plan
- 4:15 – 4:30** Upcoming Meetings in 2011-12
Spring Meeting – May 6, 2011 – VIRTUAL (by phone/computer)
Annual Meeting – August 5**, 2011 (Tentative) – Toronto, Ontario, Canada
Fall Meeting – October 24, 2011 – ~~Des Moines, Iowa~~ *10/28 @ Chicago*
Midyear Meeting – February 3**, 2012 (Tentative) – New Orleans, Louisiana
*** Tentative – requires further discussion*
- 4:30 PM** Adjourn
- 6:45 PM** Depart for Reception & Dinner
- 7:00 – 7:30 PM** Reception FAB (French American Brasserie)
- 7:30 – 9:30 PM** Board Dinner FAB (French American Brasserie)

Trans - Aug 4

Ritz-Carlton Downtown Atlanta
181 Peachtree St. NE
Atlanta, GA 30303
404/659-0400

Azio Downtown
229 Peachtree St NE
Atlanta, GA 30303
404/222-0808

French American Brasserie (FAB)
30 Ivan Allen Junior Blvd NW
Atlanta, GA 30308
404/266-1440

To: oped@nytimes.com

To Whom It May Concern:

Following is an op-ed submission from William D. Johnston and Hon. Peter D. Webster, President and President-Elect (respectively) of the American Judicature Society. Please contact me (sandersen@ajs.org) with any questions about the op-ed. Thank you for considering this submission.

Don't Politicize the Judiciary

By William D. Johnston and Hon. Peter D. Webster*

The founders envisioned a nation built on respect for the rule of law. They recognized that citizens' respect for the rule of law would be directly correlated with public faith that the law was being administered fairly. In turn, they sought to guarantee that judges would decide cases justly and without fear or favor, according to the facts and the applicable law, and without regard to extraneous influences, including interest group pressure and popular opinion.

To permit federal judges to carry out their duties independently, the founders included provisions in our U.S. Constitution to ensure that judges would hold office for life, "during good Behavior"; that their compensation could not be diminished while they remained in office; and that they could be removed only by the relatively unwieldy impeachment mechanism, and then only for "Treason, Bribery, or other high Crimes and Misdemeanors." In *Federalist Paper 78*, Alexander Hamilton explained that one reason to insulate judges from such extraneous influences was "to guard the constitution and the rights of individuals from the effect of those ill humors, which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves." Unfortunately, in many states, judges do not enjoy the same sort of insulation, or independence, from extraneous influences that federal judges have.

While attacks on judicial independence are nothing new, they appear to be increasing in both frequency and intensity. In November, three of the seven members of Iowa's Supreme Court were voted out of office in a retention election because of the court's unanimous 2009 decision that found Iowa's Defense of Marriage Act, which defined marriage as between a man and a woman, to be in violation of the equal protection clause of the state's constitution. The campaign to oust the justices was led by a former Republican candidate for governor, and financed largely by national special interest groups. Soon after the election, conservative leaders such as Newt Gingrich began calling for the remaining four justices to resign, reasoning that they, too, would have been defeated had they been on the ballot. A handful of Iowa legislators have now joined the hunt, threatening impeachment of the remaining four justices.

This is but another example of the ever-increasing calls to rein in "activist judges" by making them more "accountable." What this rhetoric really reflects is nothing more than a disagreement with the way judges decide individual cases involving emotionally charged and

* William D. Johnston, President, American Judicature Society and partner, Young Conaway Stargatt & Taylor, LLP, Wilmington, Delaware; Hon. Peter D. Webster, President-Elect, American Judicature Society and Judge, Florida First District Court of Appeal.

divisive issues. The American Judicature Society believes that such calls, including those made in Iowa throughout the last six months, are not only ill-advised, but potentially destructive to the rule of law.

What will be the effect of such efforts on one of the judiciary's most significant functions—its counter-majoritarian role as guardian of the rights of minorities? The constitution and laws of this country, and of its states, establish individual rights that endure despite the current mood of the majority. Speaking for the U.S. Supreme Court in 1940 in *Chambers v. Florida*, Justice Hugo Black eloquently expressed the importance of this role when he said that it is a “basic principle that all people must stand on an equality before the bar of justice in every American court. . . . [C]ourts stand against the winds that blow[,] as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are non-conforming victims of prejudice and public excitement.” If the judiciary is not truly independent, it cannot hope to fulfill this critical function. Moreover, if it is not perceived by the public as truly independent—that is, unmoved by extraneous influences—the judiciary cannot hope to have the respect and support of the people as the very foundation of its power and authority. Ours would certainly be a very different society today had the founders not had the foresight to ensure the independence of the judiciary.

The American Judicature Society urges those who would attack judges because of disagreement with a single ruling to pause and consider the potential consequences of their actions for our system of justice, and to ponder the possibility that they might someday find themselves constrained to look to the courts to protect their rights from encroachment by others who hold momentary sway.

* William D. Johnston, President, American Judicature Society and partner, Young Conaway Stargatt & Taylor, LLP, Wilmington, Delaware; Hon. Peter D. Webster, President-Elect, American Judicature Society and Judge, Florida First District Court of Appeal.

Ivan M. Lui-Kwan

From: ajs_board-bounces@lists.ajs.org on behalf of Seth Andersen [sandersen@ajs.org]
Sent: Thursday, March 10, 2011 9:14 AM
To: ajs_board@lists.ajs.org
Subject: RE: [ajs_board] Action Alert - Threats to Merit Selection
Attachments: ATT00001.txt

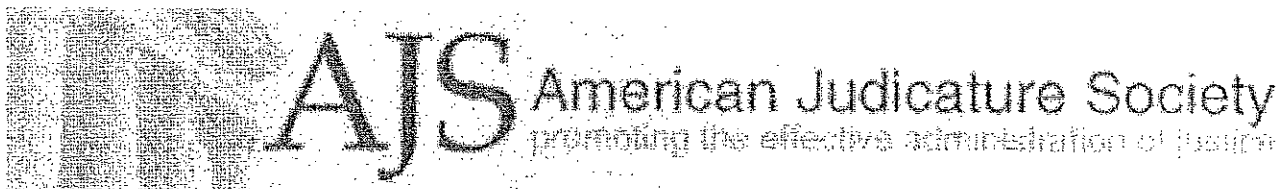
AJS Directors:

I am pleased to report that the AJS Action Alert on Threats to Merit Selection has already resulted in at least a few letters to the editor by AJS members, and hopefully several contacts with state legislatures in the affected states. The Action Alert will also be featured in a blog posting for members of the Defense Research Institute (DRI), thanks to attorney Steve Puiszus of Chicago, who is editor of a forthcoming DRI report on challenges to judicial independence. It has also been distributed to state and local bar executives and government relations staff nationwide.

Please continue to spread the word about threats to merit selection and fair and impartial courts generally, and please contact me if AJS can help in a particular state.

Best regards,
Seth

From: ajs_board-bounces@lists.ajs.org [mailto:ajs_board-bounces@lists.ajs.org] **On Behalf Of** Krista Maeder
Sent: Tuesday, March 08, 2011 11:22 AM
To: ajs_board@lists.ajs.org
Subject: [ajs_board] Action Alert - Threats to Merit Selection



AJS ACTION ALERT - March 8, 2011

All Americans rely upon a fair and impartial justice system to ensure our rights and freedoms, promote equal opportunity, and maintain stability and economic prosperity under the rule of law. For today and future generations, we must guarantee that our courts are guided by a principled commitment to fairness and excellence. Merit selection systems for judges are the best means of ensuring that our courts fulfill that commitment.

Judicial merit selection is under sustained and coordinated attack across the country. Since 1913, the American Judicature Society has promoted and defended sound merit selection systems that produce high-quality judges. We ask our members, supporters and allies to join us in resisting efforts to roll back the single most effective and proven nonpartisan judicial selection reform of the past century.

Legislation has been introduced in at least eight states to radically restructure or eliminate long-standing merit selection systems. Every week, a range of new bills are being introduced that would variously:

- Eliminate merit selection plans entirely and replace them with partisan elections;
- Keep judicial nominating commissions, but limit their independence and effectiveness, while giving governors more leeway to make politically-motivated appointments;
- Abolish nominating commissions and give governors sole authority to make political appointments to the bench;
- Add legislative confirmation of governors' nominees to the bench, which may introduce heightened partisanship, delay and litmus-testing to the selection process.

Proponents of these measures argue that they simply seek to restore democratic accountability for judicial appointments. But by removing the only opportunity for citizens to provide input on the professional qualifications of aspiring judges, without regard to partisan or interest group pressures, these proposals would actually take power away from the public and concentrate it in the hands of politicians. Most proposals also keep judicial retention elections in place; but without merit-based screening on the front end, retention votes may simply amplify the pressures of increasingly polarized political rhetoric on the judiciary.

The scope of state legislative assaults on merit selection changes on a daily basis. But as of early March, bills are active in:

Arizona: [HCR 2020](#), [HCR 2026](#), [SB1482](#), [SCR 1040](#), [SCR 1042](#), [SCR 1043](#), [SCR 1044](#), [SCR 1045](#), [SCR 1046](#), [SCR 1048](#), [SCR 1049](#)

Florida: [HJR 1097](#)

Hawaii: [HB 1547](#)

Missouri: [HJR 18](#), [SJR 17](#),

Kansas: [HB 2101](#), [HCR 5015](#), [SCR 1603](#)

New York: [A 00309](#)

Oklahoma: [HJR 1008](#), [HJR 1009](#), [SB 543](#), [SJR 15](#), [SJR 36](#)

Tennessee: [HB 1702](#), [HB 1017](#), [HB 231](#), [HB 958](#), [SB 281](#), [SB 646](#), [SB 699](#), [SB 82](#)

Fortunately, in Iowa, home to AJS headquarters, a host of misguided bills to dismantle merit selection failed to make it through legislative committees – thanks in part to the vocal opposition of a broadly-based bipartisan [coalition](#) of legal and non-legal organizations. Traditional defenders of merit selection in other states can maximize the effectiveness of their voices by joining with constituencies outside the legal profession.

Supporters of fair and impartial courts must stand together throughout our nation to ensure that ideologically-driven special interests do not take many states back to the bad old days of political selection of judges.

What can you do to help?

1. **Forward this action alert** to bar association leaders, civic groups, professional associations, and other individuals and groups that have a stake in ensuring fair and impartial courts.
2. If you live in a state with an active threat to merit selection, **make your views known to legislative leaders**. Stress the need to keep

money, partisanship and special interest influences out of the selection process.

3. Wherever you live, **write an op-ed or letter to the editor defending merit selection** or other means of ensuring fair and impartial courts, such as stronger disclosure requirements for campaign spending and public financing systems for judicial elections.
4. **Offer to speak to civic groups and schools** about the value of fair and impartial courts. Model outreach programs are available on the [AJS Public Education Portal](#).

AJS has a wealth of information, resources and networks to help you speak out in defense of merit selection and the need to maintain fair and impartial courts. Please visit the [AJS Judicial Selection in the States website](#) to access [facts](#) and [studies](#) in support of merit selection and fair and impartial courts generally.

As AJS President William D. Johnston noted in his December 2010 President's Report, "In addition to the challenges presented for years by the partisan election of judges, we have now seen further political hijacking – and erosion – of our justice system. That hijacking and erosion will only worsen if needed reforms are not pursued, and pursued vigorously."

I hope that you will join AJS and other organizations across the country in reaffirming the need to keep merit above politics in our courts.

Thank you for your support and partnership.



Seth S. Andersen
Executive Director

**DISCLAIMER: No funds from private foundations, membership dues, or other restricted sources were used to develop or disseminate this communication. As an electing charity under section 501c3 of the Internal Revenue Code, the American Judicature Society is permitted to use a portion of its unrestricted, general-purpose revenues on activities that may be defined as lobbying or advocacy.*



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Wilmington, DE 19899
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wjohnston@ycst.com

November 8, 2010

BY E-MAIL (wsj.ltrs@wsj.com)

Editor of the Wall Street Journal

Re: "Iowa's Total Recall" – November 6, 2010 Editorial

In applauding the recent retention election defeat of three justices of the Iowa Supreme Court, the *Journal* warns, "If judges want to avoid recalls, they should leave social legislation to legislators." This view fails to recognize a core responsibility of the judiciary as an independent third branch of government: to determine the constitutionality of acts of the legislature and executive branch. State and federal courts have long exercised this power of judicial review. When they do so, they are neither legislating from the bench nor usurping the powers of the other branches. Rather, they are ensuring that legislative and executive actions comport with the U.S. Constitution and with state constitutions. Unfortunately, those who would exempt "social" issues from the courts' purview, even when those issues implicate constitutional rights, would have us abandon the system of checks and balances that guarantees the rights and liberties of all.

William D. Johnston, Wilmington, Delaware

President, American Judicature Society

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